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No. 80-560

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

SAN JOAQUIN NISEI FARMERS LEAGUE, WESTERN GROWERS ASSOCIATION, AND FLORAL COUNCIL OF NORTHERN CALIFORNIA,

Petitioners,

v.

INDUSTRIAL WELFARE COMMISSION OF THE STATE OF CALIFORNIA, DIVISION OF LABOR STANDARDS ENFORCEMENT OF THE STATE OF CALIFORNIA, AND JAMES L. QUILLIN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE CALIFORNIA SUPREME COURT DENIED PETITIONERS PROCEDURAL DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN IT EXCERCISED ITS ORIGINAL JURISDICTION TO REVIEW THE ORDERS OF THE CALIFORNIA INDUSTRIAL WELFARE COMMISSION (A QUASI-LEGISLATIVE STATE AGENCY) BASED UPON THAT AGENCY'S COMPLETE QUASI-LEGISLATIVE RECORD, AS WELL AS OTHER EVIDENCE AND PLEADINGS PRESENTED TO THE COURT, BUT WITHOUT THE COURT'S CONDUCTING A *DE NOVO* EVIDENTIARY HEARING?

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RESPONDENTS' BRIEF IN OPPOSITION

The respondents, the Industrial Welfare Commission of the State of California, Division of Labor Standards Enforcement of the State of California, and James L. Quillin, respectfully request that this Court deny the petition for writ of certiorari, seeking review of the decision of the Supreme Court of California.

STATEMENT OF THE CASE

The Industrial Welfare Commission (hereafter referred to as the IWC or as the Commission) is a quasi-legislative agency of the State of California with the statutory (Labor Code, §§ 70–74, 1171–1204) and constitutional (Cal. Const., Art. XIV, § 1) mandate to determine and set, by order, the minimum wages, maximum hours and minimum working conditions for over 8,000,000 employees in 15 industries or occupational groups in California.

Petitioners are employer associations or groups which are subject to the IWC Orders 8-80, 13-80 and 14-80. The three IWC orders in question are those which were adopted by the Commission in September 1979 and which were effective on January 1, 1980.

In mid-December 1979 the petitioners filed actions in two California Superior Courts seeking to invalidate and stay enforcement of the IWC orders applicable to them. Temporary stays of the enforcement of the orders were issued at the trial court level. Upon the petition of the IWC in February 1980 the California Supreme Court exercised its original jurisdiction on April 1, 1980, to resolve the legal challenges to the IWC's 1980 orders.[1] The California Supreme Court stayed the trial court proceedings and granted a hearing.

On April 9, 1980, the IWC transmitted the administrative record of its entire quasi-legislative process of consideration and adoption of its 1980 orders to the

[1] The California Supreme Court noted in exercising original jurisdiction that the suits filed in 1979 were repetitious of the 1976 litigation and indicative of the "tortuous litigation history which had prevented the implementation of the majority of IWC wage orders in recent years. . . ." (*Industrial Welfare Com.* v. *Superior Court* (1980) 27 Cal.3d 690, 699.)

California Supreme Court. The administrative record, consisting of over 25,000 pages of investigative material, reports, hearing transcripts, meeting transcripts, petitions and other documents, was also provided to the petitioners.

On or about April 14, 1980, petitioners filed with the California Supreme Court a complete appendix consisting of all the pleadings filed in each of the trial courts, including voluminous declarations under penalty of perjury of members of the various employer groups or the employer representatives concerning the issues raised.

After the California Supreme Court had received briefs from the parties on all issues, the Court heard extended oral argument on May 7, 1980. On July 10, 1980, the California Supreme Court issued its unanimous decision upholding the IWC orders against all legal challenges. The California Supreme Court's decision directed the trial courts to dissolve the stays of the IWC orders and enter judgment for the IWC.

The California Supreme Court subsequently denied the application of petitioners for a stay of the enforcement of the IWC orders. On October 20, 1980, this Court denied petitioners' application (A-254) for a stay of the enforcement of the IWC orders applicable to them.

REASON WHY THE WRIT SHOULD BE DENIED

Petitioners have not set forth a single ground for the granting of certiorari which merits serious consideration by the Court. There are no novel, unsettled, important issues nor are there conflicting decisions or important legal matters presented by this petition. The decision of the Supreme Court of the State of California is clearly correct and there is no need for further review.

ARGUMENT

PETITIONERS' DUE PROCESS CLAIM HAS NO MERIT; JUDICIAL REVIEW WAS PROPERLY BASED UPON THE RECORD BEFORE THE CALIFORNIA SUPREME COURT [2]

The petitioners in this action contend that they have been denied due process of law under the Fourteenth Amendment. That denial is alleged to have occurred when the California Supreme Court in April 1980 agreed to review the legal validity of the Commission's challenged 1980 orders, that should have been fully enforceable on January 1, 1980. Petitioners assert that a *de novo* judicial evidentiary hearing is a *sine qua non* of the judicial review of the regulations of a state quasi-legislative agency. Such an assertion not only seriously misconstrues the scope of judicial review of regulations but also intentionally omits reference to the existence of the Commission's 25,000-page administrative record, which the California Supreme Court had before it during its

[2] For a more comprehensive exposition of respondents' argument concerning the due process issue, see pages 6–11 of Respondents' Memorandum of Opposition to Applications for Stays of Peremptory Writ of Mandate of the Supreme Court of the State of California and, In the Alternative for an Order Maintaining the Status Quo on Appeal and/or Pending Review on Certiorari, United States Supreme Court Nos. A-253 and A-254, filed September 24, 1980.

judicial review of the 1980 orders. (The table of contents for the administrative record and the accompanying transmittal letter to the California Supreme Court is attached as Exhibit A to respondents' opposition to application for stays (A-253, A-254).)

At issue before the California Supreme Court was the legal validity of Commission regulations, known as "wage orders", which constitute quasi-legislative action, authority for which is derived from the California Constitution. (Cal.Const., Art. XIV, § 1.) These regulations set minimum wages, maximum hours and minimum working conditions for the general welfare of California employees.

1. *Scope of Judicial Review*

The scope of judicial review of administrative regulations has been succinctly stated as follows:

> "California decisions on judicial review of administrative regulations reveal three kinds of inquiry; first, whether the agency has statutory authority to adopt a regulation of the kind under scrutiny; second, whether the action is arbitrary or entirely lacking in evidentiary support, third, whether the agency has complied with statutory procedures. The agency's action comes before the court with a presumption of correctness and regularity, which places the burden of demonstrating invalidity upon the assailant." (*California Assn. of Nursing Homes etc., Inc* v. *Williams* (1970) 4 Cal.App.3d 800, 810.)

A reviewing court's function is indeed a limited one when its purpose, as it is here, is to review the operation of a coordinate and co-equal branch of government. As stated in the *California Optometric Assn.* case in discussing the California Administrative Procedure Act, which

is one statutory set of criteria for regulation adoption in California, similar to that of the Labor Code which pertains to the Commission:

> "One objective of the APA is assurance of meaningful *public participation* in the adoption of administrative regulations by state agencies; another is creation of an *administrative record* assuring effective judicial review." (*California Optometric Assn.* v. *Lackner* (1976) 60 Cal.App.3d 500, 506; emphasis added.)

2. *Record Under Review*

The Commission's 1980 wage orders, in addition to its 25,000-page administrative record, came to the California Supreme Court with the benefit of statements as to the basis, which serve to require the agency itself, rather than the courts, to engage in the evidentiary review process. The statement as to the basis is described as follows:

> "The statement should reflect the factual, legal, and policy foundations for the action taken. The statement of basis must show that the order adopted is reasonably supported by the material gathered by or presented to the commission—through its own investigations, the wage board proceedings, and the public hearings—and is reasonably related to the purposes of the enabling statute." (*California Hotel & Motel Assn.* v. *Industrial Welfare Com.* (1979) 25 Cal.3d 200, 213.)

One of the purposes of the statement as to the basis as described above is to facilitate judicial review. (*Id.*, at 211.)

Thus, petitioners' assertions, concerning due process and evidentiary hearings in the 1980 litigation, seriously misstate the nature of what the California Supreme Court properly had before it for review. The California Supreme Court had reviewed a record consisting of more than 25,000 pages of administrative documentation and public hearing transcripts, the California Constitution and Labor Code, the 1980 wage orders, which included the statements as to the basis, and the petitioners' pleadings and declarations filed in the four California trial courts, and a chronological collection of all challenged IWC wage orders, some of which date back to 1918. The petitioners were free at any time to point out to the California Supreme Court where support for their evidentiary assertions could be found in the record or in their previously filed trial court pleadings and declarations. Their unwillingness or inability to make such references to the evidentiary record demonstrated the weakness of their position that there was some added evidence that the California Supreme Court should have considered.

The purpose of the Commission's extensive administrative hearing process (which included a wage board for each industry or occupation and eight days of public hearings to revise regulations, some of which have been in existence for more than 50 years) is to allow interested parties to present their position to the Commission. In the instant case the petitioners were involved in the promulgation process either because they participated in wage boards, submitted written statements of posi-

tion, or made oral argument before the Commission. There has been no challenge by petitioners to the due process accorded them by the Commission. It is during this extensive administrative review and adoption process that one must look for, and will find, due process.

3. *Due Process Was Fully Accorded Petitioners*

Due process is the right to notice and an opportunity to be heard "granted at a meaningful time and in a meaningful manner." (*Armstrong* v. *Manzo* (1965) 380 U.S. 545, 552.) Due process is flexible and allows variances in the form of a hearing appropriate to the nature of the case. (*Morrissey* v. *Brewer* (1972) 408 U.S. 471, 481; *Cafeteria Workers* v. *McElroy* (1961) 367 U.S. 886, 895; *Mullane* v. *Central Hanover Trust Co.* (1950) 339 U.S. 306, 313.) Specifically in regard to the Commission's regulations it has been said that "[o]rderly judicial review may be had without taking new evidence." (*Rivera* v. *Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 581.)

Here petitioners had full opportunity to present their evidence to the Commission. In the context of the quasi-legislative process, that is the subject of review herein, it is during the administrative hearing process itself that an affected party should present its views. It is clear that the quasi-legislative process accorded petitioners due process. Further, the California Supreme Court authorized the filing of petitioners' trial court pleadings and declarations, which had served as the basis for the trial courts' actions delaying in whole or in part enforcement

of the challenged 1980 orders. Finally, the California Supreme Court identified the issues to be briefed and provided both a briefing schedule and an opportunity for oral argument. Petitioners participated in all parts of these administrative and judicial processes. They were given a reasonable time and place to present their views. They were accorded full due process.

CONCLUSION

The petition for a writ of certiorari should be denied because it fails to present a single issue which merits this Court's consideration as stated in the foregoing argument.

Respectfully submitted,

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